October 12, 2005

Filed Electronically

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *IB Dockets 05-220, 05-221*
File No. SAT-PPL-20050926-00184

Dear Ms. Dortch:

Inmarsat's September 28, 2005 response to the September 14, 2005 submission by TMI/Terrestar[1] is largely a reprise of familiar themes. It does not require a lengthy reply. We file this brief response only to address four points raised by Inmarsat.

1. MSS Competition. Inmarsat claims that authorizing a third 2 GHz MSS provider would enhance competition. Exactly the opposite is true. TMI/TerreStar has shown in these proceedings that there is insufficient spectrum to support three fully competitive 2 GHz MSS systems. As noted economist Bruce M. Owen of Stanford University has explained, dividing the limited amount of spectrum available for MSS in the 2 GHz band among three licensees would lead to a less competitive MSS industry.[2] "It is important to remember that the strength of competition in a particular market may not depend only on the number of competitors," Dr. Owen notes. "Two strong firms in some markets may compete more effectively than three weaker ones."[3]

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[1] TMI Communications and Company Limited Partnership and its affiliate, TerreStar Networks Inc. (collectively, "TMI/TerreStar"). TerreStar is the prospective assignee of TMI's 2 GHz MSS authorization and, pursuant to an agreement with TMI, has contracted with Space Systems/Loral Inc. for a satellite that will operate in this band. At the outset, it should be noted that Inmarsat incorrectly claims that TMI/Terrestar and Mobile Satellite Ventures ("MSV") are one and the same company based on a proposed acquisition of certain interests by Motient Corporation ("Motient"). In fact, TMI/TerreStar now are managed separately. Unlike Inmarsat, which proposes to absorb additional 2 GHz spectrum for its existing L-band system, TMI/TerreStar intends to operate its 2 GHz system separately from that of MSV so as to offer additional competitive choices to consumers.

[2] *See* Owen, *Economic Issues Related to the Number of Firms Licensed to Use 2 GHz Spectrum for MSS Services* (Exhibit 4 to TMI/TerreStar Reply Comments, IB Docket No. 05-221, August 15, 2005).

[3] *Id.* at 4.

The addition of a third provider would diminish, rather than enhance, the competitiveness of the MSS market. This could well be the result sought by Inmarsat, which would be the prime beneficiary of a less competitive 2 GHz MSS environment. If the 2 GHz MSS band is splintered among marginalized players, Inmarsat's admitted dominant position in L-band MSS will be safely insulated from price and service competition.[4] But this is not the result that will effectuate the Commission's policies or serve the American public.

Inmarsat has admitted that 2 GHz MSS and L-band MSS services are competitive substitutes. When Inmarsat withdrew its 2 GHz application in 2000, it represented to the Commission that, in lieu of its proposed 2 GHz MSS system, known as "Horizons," it would construct a new L-band system (BGAN) that "will provide the same functionalities as the proposed Horizons system and more."[5] Today, Inmarsat's renewed interest in the 2 GHz MSS band is testament to the self-evident fact that multiple 2 GHz and L-band MSS systems will compete. If this were not the case, Inmarsat would not be so determined to prevent TMI/TerreStar from obtaining sufficient spectrum to provide effective, competitive service. Given the fact that MSS providers using all MSS bands will compete, it makes no sense for Inmarsat to continue to claim that effectuating our proposal will result in a "duopoly."

TMI/TerreStar's hybrid MSS/ATC system will add needed competition to the North American mobile telecommunications marketplace and provide unparalleled benefits to rural America, homeland security, and first responders.[6] These benefits cannot be achieved if the Commission does not provide sufficient spectrum for us to compete.

2. The significance Inmarsat attributes to its filing of a so-called "application." Inmarsat asserts that its just-submitted "application" demonstrates that it can "secure the timely deployment" of a 2 GHz MSS system. But this "application" is little more than a lawyer's drafting exercise. It is patently unacceptable for filing.[7] It is either eight years too late because the window for MSS applications closed in 1997 or premature because, as even Inmarsat has acknowledged, such an application could be filed only in response to the Commission's opening of a new processing round.[8]

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[4] If the spectrum available for MSS in the 2 GHz band is divided among three licensees, moreover, these weaker firms will be easier takeover targets for Inmarsat in the future, permitting it to extend its dominant position into the 2 GHz band.

[5] *See* Letter from Kelly Cameron, Powell, Goldstein, Frazer & Murphy, LLP, counsel to Inmarsat, to Magalie Roman Salas, Secretary, FCC (Nov. 21, 2000).

[6] *See* Comments of TMI/Terrestar, IB Docket No. 05-221 (July 29, 2005); Reply Comments of TMI/TerreStar, IB Docket No. 05-220 (July 25, 2005).

[7] *See* TMI/Terrestar, *Objection to Acceptance of Application for Filing,* File No. SAT-PPL-20050926-00184 (filed October 6, 2005).

[8] Alternatively, a non-U.S. entity that did not participate in the first 2 GHz MSS processing round could file for a blanket earth station license. However, an entity seeking such market (continued…)

This "application" proves nothing save for one inescapable fact: Inmarsat's proposed entry into the 2 GHz MSS market would delay the initiation of new service to the public. Inmarsat proposes a date for commencement of service of 2010 and hedges even that bet by making it conditional on a Commission grant in only a few months' time (despite Inmarsat's call for a full rulemaking and a new processing round procedure). Even this optimistic date of 2010 is two years later than the date on which TMI/TerreStar will come into commercial service. There is reason to question even this date, given candid public statements by Inmarsat's CEO that it would really expect to provide service no sooner than 2013, if ever.[9] If the Commission wishes to speed competitive MSS service to the American public, it should provide sufficient spectrum to TMI/TerreStar to commence service in accordance with the milestones that the Commission has established and that TMI/TerreStar is meeting.

3. Inmarsat's blame of Congress. Some five years after Inmarsat abandoned its 2 GHz MSS application, it has created a new explanation for its motivation: Congress made us do it. Inmarsat's new claim is that the ORBIT Act "precluded Inmarsat from deploying a 2 GHz system until this year." The November 2000 statement Inmarsat filed with its withdrawal of its 2 GHz MSS application, however, shows that the withdrawal had nothing to do with the ORBIT Act.[10] Rather, Inmarsat stated that it was "no longer . . . in a position to launch and operate a mobile satellite system in the 2 GHz band consistent with the [Commission's] milestones" because of its own decision to construct its BGAN L-band system. The Commission's dismissal of Inmarsat's application, likewise, makes no mention of the ORBIT Act.[11] In fact, Inmarsat elsewhere has asserted to the Commission that the ORBIT Act did not prevent it from offering "additional services" such as 2 GHz MSS.[12]

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access must first construct, launch and place its 2 GHz space station into operation. Inmarsat has taken none of these steps.

[9] Comments of Andrew Sukawaty, CEO of Inmarsat, *quoted in* Mark Holmes, *Executive Q&A: Inmarsat CEO Happy with IPO Performance*, Satellite News (Aug. 8, 2005). In particular, Mr. Sukawaty noted: "We fully contemplated going with L-band only spectrum and that is what we have planned for … If we were to dream up that next constellation to put it in the sky today, by the time it got designed, built and launched into commercial service, you are talking about a minimum of a five- to six-year window. Add a little bit onto that for licensing and potentially fund raising for it, and you are talking between seven to nine years. So we may be looking beyond an eight- to 10-year horizon for this S-band."

[10] *See* Letter from Kelly Cameron, *supra* n.5.

[11] *See Satellite Policy Branch Information,* Public Notice, Report No. SAT-00061 (Nov. 29, 2000).

[12] Even before Inmarsat had withdrawn its 2 GHz MSS application, it had submitted FCC filings through its distributors claiming that it had privatized consistent with the ORBIT Act. In October 2001, the Commission held that Inmarsat had, in fact, privatized consistent with the ORBIT Act and permitted it to provide "additional services" subject to Inmarsat conducting an initial public offering. *See Comsat Corporation*, 16 FCC Rcd. 21,661, ¶ 62 (2001). After this decision, Inmarsat consistently told the Commission that it was eligible to provide "additional (continued…)

Put simply, Inmarsat appears to have abandoned its 2 GHz MSS application because it lost interest in the service. It renewed its interest suddenly this year, after the Commission made clear its intent to rationalize the spectrum holdings in the 2 GHz MSS band so that competitive MSS services finally could be offered in that band. As Dr. Owen points out in his study, "competitors may utilize the Commission's procedures to restrict competition and to raise their rivals' costs, a well known and unfortunate side effect of regulation."[13] Inmarsat's renewed interest, its new proposals, and its new "application" should be seen for what they are -- the actions of an entrenched spoiler, hoping to avoid or forestall competition.

4. Inmarsat's criticism of TMI/TerreStar's "showings." Inmarsat, fresh from filing its "application," takes TMI/TerreStar to task for not yet amending its own authorization to specify the more fully featured satellite that TMI/TerreStar is constructing. Inmarsat, however, cannot demonstrate that there is anything untoward, or even unusual, in a licensee making substantial improvements to its system, at its own risk, as it moves forward with construction. TMI/TerreStar will, of course, file for an appropriate modification of its authorization in due course.

* * *

The Commission faces a clear choice. It can risk the 2 GHz MSS band on proposals that will jeopardize financing prospects of the existing licensees, delay commercial launch to the next decade and continue to marginalize MSS services that neither the Commission nor the public now consider to be competitive with terrestrial mobile services. As Dr. Owen concludes, the "use of a full-blown regulatory proceeding to allocate this spectrum could weaken the ability of the 2 GHz MSS licensees to compete and impose serious delays in the introduction of services, and consumers would likely bear most of this burden in foregone services and possibly in higher prices."[14] Instead, the Commission can authorize sufficient spectrum for the innovative and entrepreneurial services proposed by TMI/TerreStar, which will be in the hands of consumers, first responders and homeland security providers in three years' time.

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services" notwithstanding the ORBIT Act. *See, e.g.,* Consolidated Response of Inmarsat, FCC File No. SAT-MSC-20040210-00027, at 5 (April 20, 2004) ("Such a result is not mandated by the ORBIT Act"); Reply of Inmarsat, IB Docket 04-158, at 10 (May 14, 2004).

[13] *See* Owen, *supra* n.2, at 5.

[14] *Id.* at 6.

We ask that the Commission favor innovation over incumbency, commencement of satellite construction over the submission of paper promises, and speed over delay. It should grant TMI/TerreStar sufficient spectrum to operate its proposed system in the immediate future.

Respectfully submitted,

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